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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,797

07/21/2005

Rory Garth Hocking

93784

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT

PAPER NUMBER

3653

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/524,797	<b>Applicant(s)</b> HOCKING, RORY GARTH	
	<b>Examiner</b> JOSEPH C. RODRIGUEZ	<b>Art Unit</b> 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 17-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 5-7, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/9/05; 9/21/07; 12/05/07</u> .                               | 6) <input type="checkbox"/> Other: ____.                          |

**DETAILED ACTION*****Election/Restrictions***

Claims 17-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/11/2008.

***Specification******Claim Objections***

The claims are objected to as the form of the claims is improper. Where a claim sets forth a plurality of elements or steps, as in the instant claims, each element or step should be separated by a line indentation. See MPEP 608.01(m) and 37 CFR 1.75(i).

The claims are also objected to because of the following informalities:

Independent claims should begin with “**A**” and the claims depending therefrom should begin with “**The**”.

Appropriate correction is required.

Claims 5-7 and 15-16 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot itself depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, claims 5-7 and 15-16 have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-11 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding these claims, the phrase "or similar" (claims 8-11) renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or similar"), thereby rendering the scope of the claim(s) unascertainable. Cf. MPEP § 2173.05(d).

Claim 9 recites the limitations "the rear shelf frame part" and "the front shelf frame part". There is insufficient antecedent basis for these limitations in the claim.

Claim 13 recites the limitation "the entry passage". There is insufficient antecedent basis for this limitation in the claim.

Further, the claim language "(and the reverse for removal)" (claim 13, last ln.) renders the claim indefinite as it is unclear if this parenthetical language is part of the claimed invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Zachary (US 5,590,794).

Zachary (Fig. 1-11) teaches a stand for mail sorting or other applications, which is of modular construction and includes

one or more upright tubular frame members (vertical members 22 where fig. 1, 2 show various connections between upper part of frame comprising single length tube forming inverted-U with upper part of upright frame members);

a shelving system (tray and bin near 20 and horizontal support members; fig. 2-6 showing bin and shelf structure with partitions) including one or more shelves each connectable to the frame members by one or more bracket parts (joining elements shown with some having side inputs; col. 8, ln. 20-26) enabling the shelves to be mounted to and removed from the upright frame members from one side or from the front of the frame members;

wherein each shelf includes a tubular shelf frame (horizontal members underneath 20 and near 54, 58) carried by one or more of said bracket parts for supporting a tray, bin, or basket or similar. Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must

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merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above is certainly capable of having the separate components shown being fitted together.

Claims 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Alexiou (US 6,688,238).

Alexiou (Fig. 1-4) teaches a stand of modular construction including one or more upright tubular frame members (12);

a shelving system (20) including one or more shelves each connectable to the frame member by one or more bracket parts (clip portion 32 shown in fig. 2 as including a hollow interior defined between an upper portion for engaging an upright frame member from the rear and a lower portion for engaging the upright frame member from the front when a shelf is mounted to the upright member and an entry passage in the form of a longitudinally extending aperture on one side of the bracket part). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above, and the bracket part in particular is certainly capable of enabling the shelves to be mounted to and removed from the upright frame members from one side or from the front of the frame members so that the shelves may be mounted to the upright frame member(s) by tilting a front of a shelf upwardly relative to it's normal position when mounted to the upright frame

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member(s), moving the shelf on to the upright member(s) from one side so that the tubular upright member(s) pass through the entry passage into the bracket(s), and then dropping the front of the shelf downwardly, to engage the shelf in position on the upright frame member(s) (and the reverse for removal).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alexiou in view of Dohnalik (US 5,644,993).

Alexiou as set forth above teaches all that is claimed except for expressly teaching the upright frame member(s) include a series of apertures or indentations along the length(s) thereof into which a protrusion from the interior of the bracket part(s) may locate when shelves are mounted to the upright frame members. This feature, however, is well-known in the bracket arts. For instance, Dohnalik teaches that this type of bracket connection allows one to secure and adjust the shelving system to a variety of locations (Abstract; fig. 2 showing bracket 18 with protrusion near 48). Further, it would be obvious to one with ordinary skill in the art to modify the base reference with these prior art teachings to arrive at the claimed invention. The rationale for this obviousness

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determination can be found in the prior art itself as cited above. Further, the modification to arrive at the claimed invention would merely involve the substitution/addition of well-known elements with no change in their respective functions (i.e., addition of protrusion-aperture system). Moreover, the use of prior art elements according to their known functions is a predictable variation that would yield predictable results, and thus cannot be regarded as a non-obvious modification when the modification is already commonly implemented in the prior art. See MPEP 2143. Further, the prior art discussed and cited demonstrates the level of sophistication of one with ordinary skill in the art and that these modifications would be well within this skill level. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Alexiou for the reasons set forth above.

### ***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST). The Supervisory Examiner is Patrick Mackey, **571-272-6916**. The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.



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Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

/Joseph C Rodriguez/  
Primary Examiner, Art Unit 3653  
Jcr

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April 21, 2008